

Comment: Is there a potential offset for municipalities that do not provide water?

Response: No. The fee is population based and not driven by water use or deliveries.

Comment: The timing of the notification is one month after initiation of the fiscal year. ADWR should include in the permanent rule a provision requiring it to provide an estimate for budgeting purposes prior to the start of the fiscal year.

Response: ADWR does not intend to add such a provision to the rule. However, ADWR anticipates that it will issue an estimate of the fee by December 31st for the following fiscal year. The estimate is to be used for general budgeting purposes and may not conform to the official fee notice. The estimate will be based upon the prior year's appropriation and fee limit, as well as an estimate of the unobligated monies remaining in the Water Resources Fund at the end of the fiscal year.

Comment: Would ADWR consider the option of allowing municipalities to make quarterly or twice-yearly payments?

Response: For the fiscal year 2011-2012 municipality fee, at least half of the full payment is due by October 17, 2011 and the remainder is due by January 16, 2012. For years following fiscal year 2011-2012, the Department will allow two payments or a single payment so long as full payment is received on the date(s) established in the rule. The Department will issue the official notice on July 15, initial payment is due by August 15, with final or full payment due by January 15. If any of these dates fall on a weekend, payment will be due by close of the following business day.

Comment: The draft permanent rule should be re-written such that the assessment of the fee by ADWR occurs before the beginning of the budgetary planning process for the upcoming fiscal year, which occurs before December of the year preceding the fiscal year.

Response: The Department intends to provide an estimate of the municipality fee by December 31st of the preceding fiscal year. This should allow municipalities to include the municipality fee within their budgetary planning.

Comment: The proposed temporary rule should be adjusted so that the amount assessed by ADWR remains the same for at least two fiscal years, such that the calculation of the Water Resources Fee under the proposed permanent rule would not begin until Fiscal Year 2014.

Response: By legislation, ADWR's temporary rulemaking authority is established only for fiscal year 2011-2012. Any rulemaking established pursuant to such authority will expire on July 1, 2012.

Comment: The population of the state residing in municipalities represents approximately 73% of the total state population. How will ADWR charge this other 27% of the population for services ADWR provides?

Response: ADWR does not currently have legislative authority to assess such a fee on populations that are not within a municipality.

Comment: ADWR should support future legislation that establishes a fee on the other 27% of the population of Arizona or the agricultural and industrial sectors.

Response: ADWR's legislative directives come from the Governor's office.

Comment: ADWR should support establishing new fees such as increased groundwater withdrawal fees for certain types of non-exempt well pumping throughout the state.

Response: ADWR does not currently have legislative authority to establish such new fees.

Comment: ADWR should consider establishing a legal review fee commensurate with private legal firm fee schedules to be levied against applicants that require legal review. Such a fee would make the Legal Division self-funding.

Response: The permanent application fee rules recently established by ADWR contain two types of fees: fixed fees and hourly fees. Fixed fees are generally less complicated application types that typically do not require legal review. Hourly fees already incorporate time spent by the Legal Division on such applications.

Comment: ADWR should consider a hydrologic review fee commensurate with fee schedules of private consulting firms to be levied against applicants for licenses that require hydrologic attention. Such a fee would make the Hydrology Division self-funding.

Response: The permanent application fee rules recently established by ADWR contains two types of fees: fixed fees and hourly fees. Fixed fees are generally less complicated application types that typically do not require significant hydrological review. Hourly fees already incorporate time spent by Department hydrologists on such applications.

Comment: ADWR should consider a minimum annual tax on all exempt wells assessed against the current landowner of each parcel containing one or more exempt wells. Failure to pay would result in a lien against the parcel.

Response: ADWR does not currently have legislative authority to levy such a tax.

Comment: Will the fees change drastically from year to year? Will the fee estimates provided be used as guide for next fiscal year?

Response: The Department does not anticipate drastic changes in the fee from year to year.

Comment: The draft rules require a notification of the fee to the City Manager or City Attorney. Could ADWR also notify persons more directly involved with the water management departments of municipalities?

Response: The Department will post the fee and fee estimate on its website in addition to the official direct notification.

Comment: Please clarify when the fee is due. The information provided states that at least half of the fee must be paid by October 14, 2011 and any remaining portion must be

paid by January 16, 2012. Then the information further states that the entire fee must be paid by October 15 of that fiscal year.

Response: For the fiscal year 2011-2012 municipality fee, at least half of the full payment is due by October 17, 2011 and the remainder is due by January 16, 2012. In the years following fiscal year 2011-2012, at least half of the full payment is due by August 15 with final or full payment due by January 15. If any of these dates fall on a weekend, payment will be due by close of the following business day.

Comment: Will we receive an invoice for our payment? Who do we pay?

Response: The Department will provide an invoice for payment. The invoice will contain information on where payment must be sent.

Comment: Is there anything to prevent the municipality from placing and collecting the ADWR fee from our water users?

Response: No. The fee is population based and not driven by water use or deliveries. The municipalities are free to recover the cost as they see fit.

Comment: Has ADWR considered a process to collect this fee from private water companies?

Response: No. ADWR does not currently have the legislative authority to collect such a fee from a private utility.

Comment: In the future, when ADWR increases its other fees, ADWR should consider that municipalities are already being assessed this fee, take that into account and limit any increase of other fees that impact municipalities.

Response: ADWR currently does not anticipate near term changes to its fee structure. But the Department will conduct a long-term assessment of appropriate fee levels. The Department will take this comment into consideration if it decides to increase its other fees in the future.

Comment: ADWR should consider providing specific information in its annual report on what services were provided based on revenues generated by the municipal fee.

Response: The Department will provide general summary information of activities supported by the municipal fee in its annual report.

Comment: ADWR should consider not assessing the municipal fee if efficiencies and other resources are available to cover needed costs.

Response: ADWR will add language to the permanent rule allowing the Director to reduce the municipality fees for a fiscal year to avoid the accumulation of an excessive amount of unobligated monies in the Water Resources Fund at the end of a fiscal year.

Comment: A legislative change should be considered to prevent a sweep of the Water Resources Fund.

Response: The statute establishing the Water Resources Fund already includes language stating that monies in the Fund shall not be appropriated or transferred by the legislature

to fund the general obligations of the state or to otherwise meet the obligations of the general fund of the state.

Comment: How will the fee calculation be adjusted to account for new municipalities between census events?

Response: The population figure is set by the decennial census as required by A.R.S. § 1-215(31). The population is currently set by the 2010 census and will be adjusted after the 2020 census.

Comment: How often will the population numbers be updated, and what source will be used?

Response: The population figure is set by the decennial census as required by A.R.S. § 1-215(31). The population is currently set by the 2010 census and will be adjusted after the 2020 census.

Comment: In order to reduce annual fluctuations in the fee, accumulation of a carry over balance not to exceed a certain maximum (approximately 25%) of the budget could be allowed, which could reduce spikes in later years.

Response: ADWR will add language to the permanent rule allowing the Director to decrease or increase the amount of the reduction to the maximum total amount of fees that may be collected from municipalities during the year as necessary to allow ADWR to fully use all of the monies appropriated to it from the Water Resources Fund and to avoid the accumulation of an excessive amount of unobligated monies in the Water Resources Fund at the end of a fiscal year.

Comment: The proposed rule provides a review of the calculation of the fee for mathematical errors. A strict interpretation of this language would eliminate the ability to review the calculation if a clerical or typographical error is made. The rules should be broadened or clarified to include clerical or typographical errors as well as mathematical.

Response: The Department will modify the rules to also allow municipalities to seek review of the fee for clerical and/or typographical errors.

Comment: The proposed rule provides for a review of the assessed fee due to a mathematical error. This language should be removed and allow municipalities to question the fee on any relevant grounds, including calculation of population.

Response: ADWR does not believe it is appropriate to allow a municipality to seek review of its fee based on the calculation of its population. The population numbers used by ADWR will be the population numbers from the most recent United States decennial census as required by A.R.S. § 1-215(31). ADWR has no authority to change those population numbers. For that reason, ADWR believes that review is properly limited to mathematical, clerical and typographical errors.

Comment: A.R.S. § 45-117(A) allows for the collection of fees from other sectors beyond the municipal sector. Why has ADWR not pursued the second funding source by permanently adjusting the other fees deposited in the water resources fund? Although the

Department just modified its fee rules, this would more equitably distribute the fee impact.

Response: The Department does not have authority to permanently raise the fees specified by A.R.S. § 45-117(A)(1). Instead, that authority is solely limited to fee increases for fiscal year 2011-2012. Additionally, the Department has determined that the recent fee increases for services fully captures the costs of performing those services.

Comment: Would ADWR provide the appropriate electronic wire transfer information for wire transfer payments?

Response: The Department will include that information with the notification sent to each municipality.

Comment: The permanent rule should eliminate the reference to a specific dollar amount cap on the collection of funds and should rather refer to a legislative cap in general. In this way the rules would allow for more flexibility as funding and other priorities change with the legislature.

Response: The Department will revise the language of the permanent rule to provide that the cap is \$7 million unless the legislature establishes a different cap. This will provide flexibility in the event that the legislature changes the current cap of \$7 million.

Comment: The city has no way to recoup the cost of this fee as we are not a water provider. We recommend that you pursue alternative funding sources, such as including the private water companies who regularly use your services and are subject to your regulations.

Response: As required by A.R.S. § 45-118, the fee is population based and not driven by water use or deliveries. The municipalities are free to recover the cost as they see fit.

Comment: ADWR should change the definition of population from the currently proposed definition to “service area population as most recently reported to ADWR.”

Response: ADWR disagrees. The legislature used the term “population” in A.R.S. § 45-118 and not “service area population.” Population is defined in A.R.S. § 1-215(31) as the “population according to the most recent United States decennial census.”

Comment: By fixing the population to the most recent decennial census, ADWR is not allowing for growth or decline in a municipal population. This was not the intent of the legislature.

Response: ADWR properly used the definition of the term “population” as established in A.R.S. § 1-215(31), which is as the “population according to the most recent United States decennial census.”

Comment: As a municipal corporation incorporated prior to the creation of the State of Arizona we should be exempt from this discriminatory form of taxation; we request ADWR review the legality and equity of this attempt to extract additional funds from this community for the state at large.

Response: The enactment of the fee was a legislative action and review of the legality of the enactment is beyond the authority of the Department.

Comment: A question was raised on the justification to the taxpayer/ratepayers of fees and whether you could provide the appropriate document, were you referring to the ADWR annual report?

Response: Yes.